

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|  |   |                    |
|--|---|--------------------|
| <b>DAVID A. CERULLO</b>                      | ) |                    |
| Claimant                                     | ) |                    |
| VS.  | ) |                    |
|  | ) | Docket No. 223,171 |
| <b>TEXTRON, INC./CESSNA AIRCRAFT COMPANY</b> | ) |                    |
| Respondent                                   | ) |                    |
| AND  | ) |                    |
|  | ) |                    |
| <b>KEMPER INSURANCE COMPANIES</b>            | ) |                    |
| Insurance Carrier                            | ) |                    |

**ORDER**

Respondent appeals from the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on June 12, 1997.

**ISSUES**

The Order by the Administrative Law Judge granted claimant's request for temporary total disability and medical benefits. Respondent contends that the appealed Order exceeds the jurisdiction of the Administrative Law Judge because claimant has not established that he suffered accidental injury arising out of and in the course of his employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

Claimant testified that he initially injured his back at work on approximately July 24, 1996, when a chair on which he was sitting broke. He reported the injury and was referred that day to the St. Joseph Hospital emergency room. Claimant was seen again by Cessna Health on July 25 and August 16, 1996. Claimant continued to work but testified that he did so with pain. He testified that he suffered additional injury in March 1997 while getting up off a creeper. The medical records of Cessna Health Services reflect that claimant was

seen on March 19, 1997, but state there was no new injury known. The records for the visit on that date indicate claimant felt the problems were related to the incident in July of 1996. The record of claimant's visit on March 21, 1997, mention working with the creeper.

Claimant was able to continue to work until May 5 when he awoke in the morning in pain. Cessna Health Service records for a visit on May 7, 1997, indicate there had been no new incident either at work or at home.

Respondent challenges the credibility of claimant's version of the events. Specifically, respondent challenges the assertion that claimant continued to have pain after the accident in July 1996. Respondent points out that claimant did not seek medical treatment during that period. Respondent also points out that the date claimant awoke in pain, May 5, 1997, was a Monday following a weekend off. Finally, respondent introduced temporary disability claim forms which ask whether the incident happened at work. The "Yes" box was initially checked and then crossed out. "No" is then checked, indicating a workers compensation claim was not being made and there was not an accident at work.

The Appeals Board concludes that if claimant's testimony is accurate, the Administrative Law Judge was correct in awarding benefits. The evidence suggests that claimant's current need for medical treatment stems from either the July 1996 incident or the March 1997 incident or both. The Appeals Board generally defers to the judgment of the Administrative Law Judge regarding credibility of witnesses who testify before the Administrative Law Judge. The documentary evidence does not directly contradict claimant's testimony. The medical records may reflect uncertainty about the cause, but they do not directly contradict claimant's testimony. The disability claim form shows the answers have been changed, but the record includes no explanation. Claimant testified he does not know how the change occurred. The same form also contains a written statement that the incident occurred at Cessna Aircraft when a chair broke due to a faulty hinge, consistent with claimant's testimony. The Appeals Board, therefore, concludes that the Order by the Administrative Law Judge should be affirmed.

**WHEREFORE**, the Appeals Board finds that the Order by Administrative Law Judge Nelsonna Potts Barnes, dated June 12, 1997, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

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BOARD MEMBER

c: Tom E. Hammond, Wichita, KS  
P. Kelly Donley, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director